

May 24, 2010

The Council on Environmental Quality
Attn: Ted Boling
722 Jackson Place, NW
Washington, DC 20503

Re: National Environmental Policy Act (NEPA) Draft Guidance, "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions"

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Council on Environmental Quality's (CEQ's) notice regarding NEPA draft guidance regarding the "Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" published in the February 23 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by NEPA. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to NEPA's requirements. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations.

The proposed CEQ guidance attempts to expand NEPA analyses to include the effects of GHG emissions. ARTBA shares CEQ's goal of protecting the environment and minimizing the impacts of development. ARTBA also supports NEPA and realizes it is an integral component of the transportation planning process. However, expanding the scope of NEPA will only serve to exacerbate delays and inefficiencies currently present in the environmental review and approval process. Until the current procedural inefficiencies of NEPA are addressed, ARTBA would caution against expanding the reach of the statute.

According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project from the identification of the project need to the start of construction. The same report also shows it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally-funded highway project. This process involves dozens of overlapping state and federal laws, including: NEPA; state NEPA equivalents; wetland permits; endangered species implementation; and clean air conformity.



The basic problem is that the development of a transportation project involves multiple agencies evaluating the impacts of the project as required by NEPA. While it would seem that the NEPA process would establish a uniform set of regulations and submittal documents nationwide, this has not been the case. For example, the U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (Corps), Fish and Wildlife Service (FWS) and their companion state agencies each require an independent review and approval process, forcing separate reviews of separate regulations, and unique determinations of key benchmark issues--such as the purpose and needs of a project--and requiring planners to answer multiple requests for additional information. Also, each of these agencies issues approvals according to independent schedules.

Also, further expanding NEPA to include GHG emissions will provide another avenue for project opponents to use frivolous litigation as a method of delay. Already, NEPA has been transformed from a vehicle which once helped to mitigate the environmental impacts of development to a tool which enables special interest anti-growth groups to delay needed and environmentally beneficial transportation infrastructure through the use of unending litigation. Unless reforms on NEPA litigation are enacted, expanding NEPA to cover GHG emissions will only worsen this situation by providing yet another avenue to the courthouse door for project opponents.

Should CEQ decide to proceed with the expansion of NEPA to cover GHG emissions, other flaws in the NEPA process will need to be rectified. Most importantly, NEPA does not consider the environmental benefits of fully completed projects. NEPA should not operate in a vacuum in this way. When the environmental impacts of a project are considered, its benefits must be considered as well. Also, the term "environment" cannot be narrowly defined as the impact on the air quality of a region without also considering appropriate public health concerns. These concerns, which all factor into the state of an area's environment, should include traffic congestion and other considerations. Also, related public health issues, such as the stress caused by lengthy commutes and traffic impact on first-responders, should be part of any analysis.

In the case of transportation improvements, once completed they yield significant reductions in emissions as well as reductions in traffic congestion and fuel use. This needs to be given proper weight and consideration by the NEPA process. Also, the NEPA process needs to consider the environmental impact of not undertaking federal highway transportation projects. For example, part of the NEPA consideration should be the environmental consequences of continued congestion if a transportation improvement is not undertaken.

Insufficient system-wide capacity already produces specific bottlenecks that are reported to cause 50 percent of total congestion on the nation's freeways. With respect to GHGs, a 2004 study of the nation's most severely congested highways highlighted the fact that modest improvements to traffic flow at 233 bottlenecks would reduce carbon dioxide emissions by as much as 77 percent and conserve more than 40 billion gallons of fuel over a 20-year period. In analyzing the GHG effects of a transportation project, the NEPA process must focus on the overall net GHG effects of the project, not solely on the construction phase. Naturally, there will be an uptick in emissions any time there is construction. However, a complete analysis must balance the emissions generated during construction against the emissions reduced through congestion relief once the project is completed.

Finally, consideration of GHG emissions from transportation projects must only concern those emissions generated from the project itself. Projects cannot be held responsible for emissions generated by subsequent development occurring after project completion. Otherwise, the NEPA process could be stretched out into a never-ending affair. Project sponsors should only be held responsible for emissions generated by the projects they oversee. If the completed transportation improvement leads to future, separate projects, then separate new NEPA analyses should be undertaken.

NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will affect those needs. Expanding NEPA in its current form to include GHG analysis will only enhance delays already present in the process. Should CEQ decide to go down this path, transportation projects should be examined in light of the GHG emissions reductions they will achieve once completed as well as those they generate during construction. Further, transportation projects should not be held responsible for emissions generated by separate development projects.

Sincerely,

A handwritten signature in black ink, reading "T. Peter Ruane". The signature is fluid and cursive, with the first name "T." and last name "Ruane" clearly distinguishable.

T. Peter Ruane
President & C.E.O